

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION(L)NO.734 OF 2004
IN
COMPANY PETITION NO.3 OF 2002

Shree Mahavir Ispat Ltd. (In Prov.Liqn.)..Petitioner
V/s

SICOM Ltd. ..Applicant

Shri J.Mitra with M.P.Rege i/b M.P.Rege & Co. for
applicant.

Shri G.B.Kedia for purchaser

Shri [P.G.Rao](#), Dy.Official Liquidator

Coram : S.U. Kamdar, J.

Date : 31st January, 2005

P.C.

1. Heard the advocate for the applicant and the
Official Liquidator.

2. The applicant has produced the No Objection
Certificates from other secured creditor for permitting
them to sell the assets of the company viz.
land, building situated at and Gat No.863 Village Yawat
Daund, District Pune for the total consideration of
Rs.30 lakhs. The purchaser is represented by

Mr.Kedia.Mr. Teja representing the applicant is willing to appropriate the net sale proceeds among the secured creditors subject to the provisions of section 529A of the Companies Act,1956.He is willing to give a guarantee and undertaking in favour of official liquidator towards workers claim stating therein that as and when the workers claim is adjudicated by the liquidator then he will bring in the necessary amount as adjudicated by liquidator to satisfy the claim of the workers. He further states that there are various creditors having pari passu charge on the said property i.e SICOM,MSFC, Bank of Baroda, IDBI and that they will appropriate the said amount accordingly.

3. The Official Liquidator has drawn my attention to the judgment of the Apex Court in the case of **International Coach Builders Ltd. vs. Karanataka State Financial Corporation reported in 2003(Vol.14)Company Case pg.614** particularly the operative part of the judgment which is as follows:

“We, therefore, hold as under:

(1)The right unilaterally exercisable under section 29 of the SFC Act is available against a debtor, if a company, only so long as there is no order of winding up;

(2)The SFCs cannot unilaterally act to realise the mortgaged properties without the consent of the official liquidator representing workmen for the pari passu charge in their favour under the proviso to section 529 of the Companies Act,1956;

(3)If the official liquidator does not consent, the SFCs have to move the company court for appropriate directions to the official liquidator who is the pari passu charge holder on behalf of the workmen. In any event, the official liquidator cannot act without seeking directions from the company court and under its supervision".

4. At present, the official liquidator has pointed out, that he has been appointed only as a provisional liquidator of the company and the order dated 17.2.2004 passed by His Lordship Justice Shri [A.M.Khanvilkar](#) is not final order of winding up of the company. In view thereof, the workers claims are not yet adjudicated, the same will have to be adjudicated by the official liquidator.

6. In view of the aforesaid, I permit the sell of the assets of the company of which possession is taken by the applicant in exercise of power under section

29 of SFC Act on the following conditions.

7. The official liquidator to invite and adjudicate the claim of the workers of the company.

8. A sum of Rs.5 lakhs will be deposited by the purchaser directly with the Official Liquidator, High Court, Bombay out of the purchase price of Rs.30 lakhs.

9. The applicant shall file an additional undertaking in this court inter alia providing that as and when the claim of workers is adjudicated and admitted by the liquidator then they shall bring in necessary amount as per the provisions of section 527A of the Companies Act out of the purchase price received and appropriated by them under this order. This amount will be after adjusting the sum of Rs.5/- lakhs which is already directed to be deposited under this order.

The applicant shall also file separate undertaking to this court that in respect of bifurcate claim of the workers, it should be attended by the official liquidator. As and when it makes clear the same will be paid in the court by the applicant out of purchase payment at their risks under the present sell. Such undertaking shall be filed by the official not less than the General Manager of the applicant company.

9. On the aforesaid conditions, the present company application is made absolute in terms of prayer clause (a) and (b).

(S.U.Kamdar, J.)